

Categorical Exclusion

Lot 51 Color-of-Title Claim

Sierra Front Field Office

Carson City

Nevada 89701

775-885-6000

Categorical Exclusion Review

Background

BLM Office:

LLNVC02000

Lease/Serial/Case File No.: NVN 091251

Location of Proposed Action: Mount Diablo Meridian, Storey County, Nevada; Township 16 North, Range 21 East, Section 5, lot 24 and Section 6, lot 13.

Description of Proposed Action:

The Bureau of Land Management (BLM), Sierra Front Field Office proposes to convey “Lot 51” to Northern Comstock LLC¹ under the authority of the Color-of-Title Act (COT) of December 22, 1928 (45 Stat. 1069, 43 U.S.C. §§ 1068 and 1068a), as amended, and processed in accordance with the federal regulations contained in 43 CFR 2540. “Lot 51” is a Storey County designation for Assessor Parcel Number 002-131-001. According to a BLM Cadastral survey completed in April 2016, the legal description for “Lot 51” is T16N, R21E, Section 5, Lot 24 and Section 6, Lot 13 for approximately 23.76 acres (see Project Map).

The BLM would issue a patent to Northern Comstock LLC that would contain the following terms, conditions, and reservations:

1. A reservation of a right-of-way to the United States for ditches or canals constructed by the authority of the United States under the Act of August 30, 1890 (43 U.S.C. § 945);

¹ Northern Comstock LLC is the wholly-owned subsidiary of Comstock Mining Inc. Since the entity of Comstock Mining, Inc. (Inc.) owns all of the entity of Northern Comstock LLC, all activity that happens in LLC rolls up to Inc. They are treated as one consolidated company for tax purposes and for Security and Exchange Commission (SEC) reporting purposes as the consolidated ownership is the same. BLM case file records also refer to “Comstock Mining, LLC,” which also is a subsidiary of Comstock Mining Inc.

2. A reservation to the United States of all mineral deposits in the lands so patented, and to it, or persons authorized by it, the right to prospect for, mine, and remove such deposits from the same under applicable law and such regulations as the Secretary of Interior may prescribe;
3. A condition that the conveyance be subject to all valid and existing rights of record;
4. A notice and indemnification statement under the Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. § 9620(W)), indemnifying, and holding the United States harmless from any hazardous materials that may have occurred; and
5. Additional terms and conditions that the authorized officer deems appropriate.

Background

On June 8, 2012 the Northern Comstock LLC (Applicant) applied to the BLM to acquire a 23.76 acre parcel of public land in Storey County, Nevada (the Lot 51 parcel), through a Class 1 COT claim pursuant to the COT (43 U.S.C. §§ 1068 and 1068a). The COT provides that any individual, group, or corporation who has evidence giving the appearance of having title to public lands, which are administered by the BLM, and legal title to the lands remain vested in the United States, may file a Color-of-Title claim. Under the COT, a claimant can file a Class 1 COT claim if the claimant has held public lands in good faith and peaceful, adverse possession for a minimum of 20 years, upon which the claimant has placed valuable improvements. Per BLM Manual 2540, Class 1 COT claims are nondiscretionary and a patent conveying title to the land must be issued to a claimant who has satisfactorily met the requirements of the COT. In 1953 Congress specifically amended the COT specifically making Class 1 claims mandatory and not subject to federal agency discretion. The BLM has investigated the Applicant's Class 1 COT claim. On February 13, 2013, the BLM determined that the Applicant had presented sufficient evidence for the BLM to allow the claim to move forward.

Qualifications

The Lot 51 appears to qualify under a Class 1 COT claim, having demonstrated that the property was held in peaceful adverse possession for more than 20 years and upon which valuable improvement have been placed. The BLM has investigated the chain of title and has verified that the Applicant's predecessors-in-interest acted in a manner that demonstrated good faith and that they had possession of the Lot 51 parcel for more than 20 years.

History

The public land within the Lot 51 parcel was thought to be under private ownership from 1987 to 2010. From December 30, 1987 to May 9, 1993, the D.W.C. Lode Mines, Inc. held title to the parcel for approximately five years and four months. From May 10, 1993 to April 24, 1995, Storey County held title to the parcel through a Treasure Deed for approximately one year and 11 months. From April 25, 1995 to July 9, 1998, D.W.C. Lode Mines Inc., held title to the parcel for approximately three years and three months. From July 10, 1998 to October 18, 2010, D.W.C. Resources, Inc., held title to the parcel for a period of approximately 12 years, three months.

Valuation

In accordance with the regulations in 43 CFR 2541.4, the BLM would appraise the Lot 51 on the basis of its fair market value, with consideration given for: 1) improvements made to the property, and 2) equities to the applicant in determine the price paid by the applicant for the parcel. The Lot 51 parcel would be valued based on an appraisal approved by the Department of Interior – Office of Valuation Services (OVS).

In addition to completing an appraisal of the fair market value of the parcel, the BLM has also prepared a Mineral Potential Report and Phase I, Environmental Site Assessment (reports on file).

Land Use Plan Conformance

Land Use Plan Name:

Carson City Consolidated Resource Management Plan

Date Approved/Amended: May 2001

The proposed action is in conformance with the applicable LUP because it is specifically provided for in the following LUP decision(s):

- LND 6, Administrative Actions, #6: "Exchanges and minor non-Bureau initiated realty proposals will be considered where analysis indicates they are beneficial to the public."
- LND 7, Standard Operating Procedures, #1: "Transfer of land from federal ownership is subject to the following provision: Mineral rights will be reserved to the United States unless there are no known mineral values in the land or the nonmineral development of the land is of more value than the minerals and the reservation of mineral rights interferes with such nonmineral development."

Compliance with NEPA:

The Proposed Action is categorically excluded from further documentation under the National Environmental Policy Act (NEPA) in accordance with 516 DM 11.9.

The BLM has determined that a Class 1 COT claim does not constitute a "major federal action" and has specifically exempted this action from compliance with the NEPA. In 1953 Congress amended the Color-of-Title Act specifically making Class 1 claims mandatory and not subject to federal agency discretion.

The Proposed Action has been reviewed, and none of the extraordinary circumstances described in 516 DM 2 apply. The applicable section is: 516 DM 11.9 Appendix 4, (E) (6):

"Resolution of class one color-of-title cases."

I considered the following:

NOTE: Answers to the Extraordinary Circumstances questions below will affect the level of NEPA required for this project.

If the answer to all Extraordinary Circumstances is NO, the use of the CX is appropriate.

If the answer to any one Extraordinary Circumstance is MAYBE or UNKNOWN, an EA is the appropriate NEPA document.

If the answer to any Extraordinary Circumstance is YES, an EIS is required.

EXTRAORDINARY CIRCUMSTANCES <i>Does the proposed action...</i>	NO/MAYBE OR UNKNOWN/YES & RATIONALE (If appropriate)	RESOURCE/PROGRAM SPECIALIST(S) ASSIGNED REVIEW	NAME OF TEAM MEMBER(S) ASSIGNED REVIEW	INITIALS AND DATE
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Impacts to Public Health and Safety

1. Have significant impacts on public health and safety?

	NO	Lands and Realty	Shaina Shippen	//s// 3/15/2016
	NO	Planning and Environmental Coordinator	Brian Buttazoni	//s// 3/16/2016

Rationale: patenting of Lot 51 under the COT to Northern Comstock LLC is an administrative action, and as such would not cause direct or indirect impacts to public health and safety.

Impacts to Natural Resources or Unique Geographic Characteristics

2. Have significant impacts on such natural resources and unique geographic characteristics as historic or cultural resources; park, recreation or refuge lands; wilderness or wilderness study areas; wild or scenic rivers; national natural landmarks; sole or principal drinking water aquifers; prime farmlands; wetlands (Executive Order 11990); floodplains (Executive Order 11988); national monuments; migratory birds (Executive Order 13186); and other ecologically significant or critical areas?

	NO	Lands and Realty	Shaina Shippen	//s// 3/15/2016
	NO	Outdoor Recreation Planner	Arthur Callan	//s// 4/8/2016
	NO	Wildlife Biologist	Pilar Ziegler	//s// 3/17/2016

Rationale: patenting of Lot 51 under the COT to Northern Comstock LLC is an administrative action, and as such would not cause direct or indirect impacts to biological and cultural resources that may be present. There are no wilderness or wilderness study areas, wild or scenic rivers, prime farmlands, floodplains, national monuments or ecologically significant or critical areas present in Lot 51. Lot 51 includes the American Flat Road, open to public users that are accessing the former American Flat Mill site, the V&T Railroad, and other nearby public lands. Lot 51 includes the Lucerne Haul Road, that has been used by Comstock Mining, LLC to haul mined ore from the Billie the Kid and Lucerne pit areas to their heap-leach processing facility in American Flat since 2012.

Level of Controversy

3. Have highly controversial environmental effects or involve unresolved conflicts concerning alternative uses of available resources [NEPA Section 102(2)(E)]?

	NO	Lands and Realty	Shaina Shippen	//s// 3/15/2016
	NO	Planning and Environmental Coordinator	Brian Buttazoni	//s// 3/16/2016

Rationale: patenting of Lot 51 under the COT to Northern Comstock LLC is an administrative action, and as such would not cause direct or indirect impacts to biological and cultural resources that may be present. There are no wilderness or wilderness study areas, wild or scenic rivers, prime farmlands, floodplains, national monuments or ecologically significant or critical areas present in Lot 51.

Highly Uncertain or Unique or Unknown Environmental Risks

4. Have highly uncertain and potentially significant environmental effects or involve unique or unknown environmental risks?

	NO	Lands and Realty	Shaina Shippen	//s// 3/15/2016
	NO	Planning and Environmental Coordinator	Brian Buttazoni	//s// 3/16/2016

Rationale: patenting of Lot 51 under the COT to Northern Comstock LLC is an administrative action, and there are no uncertain and potentially significant environmental effects or involve unique or unknown environmental risks. Current uses of Lot 51, including the existing Lucerne Haul Road by Comstock Mining, LLC since 2012 are not anticipated to change under the COT. Lot 51 was thought to have been in private ownership for more than 20 years, and has been subjected to mining-related development similar to the current use of the parcel. In 1999 The Plum Mining, Co. LLC constructed a road through Lot 51 (known today as the "Bypass Road") to access the Billie the Kid Pit. In 2004 The Plum Mining, Co., LLC constructed the Lucerne Haul Road through Lot 51, which has been in use since 2012 by Comstock Mining, LLC to haul mined ore from the Lucerne Pit to their existing heap-leach in American Flat.

On April 14, 2016 the BLM accepted a Phase I, Environmental Site Assessment for the parcel. The findings of the report were that Lot 51 is within the Carson River Mercury Site (CRMS), and that Comstock Mining, Inc. has an ongoing soil sampling program through the Nevada Department of Environmental Protection. The eastern portions of Lot 51 is in a low risk zone of the CRMS. The report also found that within Lot 51 there are several small debris piles, which are not "recognized environmental conditions" that require remediation by Comstock Mining, Inc..

Precedent Setting

5. Establish a precedent for future action, or represent a decision in principle about future actions, with potentially significant environmental effects?

	NO	Land and Realty Specialist	Shaina Shippen	//s// 3/15/2016
	NO	Planning and Environmental Coordinator	Brian Buttazoni	//s// 3/16/2016

Rationale: patenting of Lot 51 under the COT to Northern Comstock LLC is an administrative action, and does not set a precedent for future actions. Any new COT claims in the vicinity would be subject to separate review by the BLM.

Cumulatively Significant Effects

6. Have a direct relationship to other actions with individually insignificant, but cumulatively significant, environmental effects?

	NO	Planning and Environmental Coordinator	Brian Buttazoni	//s// 3/15/2016
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Rationale: patenting of Lot 51 under the COT to Northern Comstock LLC is an administrative action, and does not have a direct relationship to other actions. Other actions on public lands would be subject to separate review by the BLM.

Impacts to Cultural Resources

7. Have significant impacts on properties listed or eligible for listing, on the National Register of Historic Places as determined by either the Bureau or office?

	NO	Archeologist	Rachel Crews	//s// 4/11/2016
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Rationale: Although the land in question is located within the Virginia City National Register District and National Historic Landmark, patenting of Lot 51 under the COT is not an Undertaking under the National Historic Preservation Act (NHPA). The implementing regulations at 36 CFR 800.3(a) state that the agency official determines whether the proposed Federal action is an undertaking as defined in 800.16(y).

36 CFR 800.16(y) states, "Undertaking means a project, activity, or program funded in whole or in part under the direct or indirect jurisdiction of a Federal agency, including those carried out by or on behalf of a Federal agency; those carried out with Federal financial assistance; and those requiring a Federal permit, license or approval."

The lands in question have been treated as private lands by the county and the public for decades. The language of the COT and case law regarding COT claims indicate that the BLM has no decision-making authority regarding this COT claim. The BLM has determined that this mandatory action under the COT is not an "Undertaking" under the NHPA.

Impacts to Federally Listed Species or Critical Habitat

8. Have significant impacts on species listed, or proposed to be listed, on the List of Endangered or Threatened Species, or have significant impacts on designated Critical Habitat for these species?

	NO	Botanist, Wildlife Biologist	Dean Tonenna, Pilar Ziegler	//s// 4/8/2016
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Rationale: there are no federally listed or proposed to be listed species, or designated critical habitat in Lot 51.

Compliance with Other Laws

9. Violate a Federal law, or a State, local, or tribal law or requirement imposed for the protection of the environment?

	NO	Planning and Environmental Coordinator	Brian Buttazoni	//s// 3/16/2016
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Rationale: patenting of Lot 51 under the COT to Northern Comstock LLC is an administrative action, and would not violate any law that requires the protection of the environment. As directed by Congress in 1953, a Class 1 COT claim is non-discretionary, and as such the BLM has determined that a Class 1 claim is not a "major federal action" and has exempted the action from the NEPA.

Environmental Justice

10. Have a disproportionately high and adverse effect on low income or minority populations (Executive Order 12898)?

	NO	Planning and Environmental Coordinator	Brian Buttazoni	//s// 3/16/2016
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Rationale: patenting of Lot 51 under the COT to Northern Comstock LLC is an administrative action, and would not affect low income or minority populations. There are no low income or minority populations present in Lot 51.

Access to Sacred Sites

11. Limit access to and ceremonial use of Indian sacred sites on Federal lands by Indian religious practitioners, or significantly adversely affect the physical integrity of such sacred sites (Executive Order 13007)?

	NO	Archeologist	Rachel Crews	//s// 4/11/2016
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Rationale: repeated past consultation with local Native American tribes on other projects in the vicinity has indicated that no sacred sites or locations of ceremonial use are present in or near the COT claim lands.

Noxious Weeds or Non-Native Invasive Species

12. Contribute to the introduction, continued existence, or spread of noxious weeds or non-native invasive species known to occur in the area, or actions that may promote the introduction, growth, or expansion of the range of such species (Federal Noxious Weed Control Act and Executive Order 13112)?

	NO	Botanist	Dean Tonenna	//s// 4/8/2016
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Rationale: patenting of Lot 51 under the COT to Northern Comstock LLC is an administrative action, and would not directly or indirectly affect any noxious weeds or non-native invasive species that may be present Lot 51. Comstock Mining, LLC has in place an integrated weed management plan in place to control and/or eradicate weeds.

Conclusion

Bryant D. Smith Field Manager		Date: 4/21/2016
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I have concluded that this project is not a "major federal action," there are no extraordinary circumstances, and is categorically excluded under the NEPA. This conclusion is an interim step in the process and does not constitute a decision on the project.